

East Longmeadow Conservation Commission

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Craig Jernstrom, chair

Thomas O'Brien, clerk

René Reich-Graefe

Michael Carabetta

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Minutes of September 10, 2014

Present were: Chair, Craig Jernstrom; Clerk, Thomas O'Brien, René Reich-Graefe, William Arment and Robert Sheets. Michael Carabetta was absent.

Discussion on enforcement order dated June 25, 2014 and review of the enforcement regulations

Chairman Jernstrom opened the meeting at 7:00 p.m. and advised that Mr. Carlin was not present as yet. He addressed and welcomed Mark Stinson of the state DEP. Mr. Stinson addressed the Enforcement Order that the Commission issued and commented that the aerials of 383 Porter Road indicate multiple violations. Mr. Stinson provided copies of plans to show the Commission the areas that were affected. Mr. O'Brien asked if National Heritage was notified and Mr. Stinson confirmed that they were. At this time, Mr. Carlin arrived.

Mr. Stinson read the exemptions for homeowner's own use and said that it is not just 10 cords but more criteria was involved:

- Not to exceed 5,000 board feet or 10 cords within any 12 month period without an approved forest cutting plan;
- After the cutting, the remaining trees shall be evenly distributed throughout the area where the cutting occurred and ground cover shall not be less than 50 percent; - it is not like you can take a "whole bunch" – you have to take a tree here – a tree there.
- Cutting and removal of trees shall only occur during the period where the ground is sufficiently frozen, dry or otherwise stable to support the equipment used;
- The cutting, removal or other destruction of trees and understory vegetation without a forest cutting plan shall not occur within 25 feet of the bank, with the exception of providing access for the activities described in 301 CMR (b) 15;
- No slash shall be placed within 25 feet of the bank; and,
- No filling or other change shall occur in the existing topography of the resource area.

Mr. Stinson continued by stating that the homeowner could perform the cutting if they stayed within the criteria. He said that it doesn't sound like the criteria was met so the violation is a valid violation and the Commission did the right thing. Additionally, the order was not contested.

According to Mr. Stinson, if the Commission asks DEP to take the case on it will be an easy one for them because they can issue a \$5,000 fine simply for failure to comply with the Commission's Enforcement Order, not even taking into account the actual violation just the fact that the Enforcement Order was not complied with. In addition to the \$5,000 fine, they also have a computer program that can tell how much resource area was altered, whether it is riverfront, what the resource areas are, if it is within an estimated habitat and whether or not the action is deliberate. He continued by stating that, according to the log that Ms. Macdonald sent him, it sounds like it was deliberate. According to the log, on May 16th Mr. Carlin stated he was only taking four trees down and then he kept on cutting and cutting.

Mr. Jernstrom said for the record according to the log Mr. Carlin was also contacted on June 12th and said he was only taking four trees down. On June 19th the harvesting continued. June 23rd was the first site visit and there was evidence that approximately forty trees had been removed.

Mr. Stinson said there is a significant violation and he would definitely agree with the Commission. If the Commission so desires, his boss would not mind taking it on, if Mr. Carlin doesn't want to comply with the Commission's Enforcement Order. He said right now he is not in compliance because he has failed to submit a restoration plan as required by the Order.

Timothy Carlin, 383 Porter Road discussion regarding Enforcement Order

Chair, Craig Jernstrom asked Mr. Carlin to come up before the Commission. Mr. Stinson explained to Mr. Carlin that he was present to help the Conservation Commission get compliance with their Enforcement Order. He said as of right now Mr. Carlin is not in compliance because he failed to come up with a restoration plan for the Commission to review.

Mr. O'Brien asked Mr. Carlin if he has a restoration plan that he would like to present to the Commission. Mr. Carlin said he does not because he thought his plan was to plant some trees in the fall.

Mr. Jernstrom asked Mr. Carlin if he received the Enforcement Order that was mailed via Certified Mail. He added that Mr. Carlin was also in attendance at the June 25th meeting. Mr. Jernstrom advised Mr. Carlin that they had discussed the issue at that June meeting, that the Commission voted on it, and that the Commission's course of action was to issue the Enforcement Order which was sent certified mail to Mr. Carlin's residence.

Mr. Jernstrom showed Mr. Carlin the Enforcement Order and Mr. Carlin said that he never saw it and that wasn't his signature. Mr. Jernstrom said that it looks like Patrick O'Keefe signed for it and asked Mr. Carlin who that might be. Mr. Carlin said maybe someone that was working at his house that day.

Mr. O'Brien asked what the protocol is for registered mail that has been delivered and accepted. He stated that aside from that, he (Mr. Carlin) was before the Commission previously regarding the issue, that it was discussed with him, that he needed to do some replanting, he was informed that he needed to have a restoration plan before the Commission prior to this meeting. Mr. O'Brien said the Order was issued as a course of action for his lack of coming before the Commission with a plan. Mr. O'Brien explained to Mr. Carlin that he clearly heard the conversation that just occurred in front him and they could turn it over to DEP and DEP will issue heavy fines. Mr. O'Brien suggested that Mr. Carlin could offer to come before the Commission in another week or two with a plan and a good attitude toward making this right.

Mr. Carlin said that he certainly planned on replanting – that was the plan all along and that it was said that he was to replant 15 or 20 trees. Mr. Jernstrom said no that it was approximately 40 trees. Mr. Stinson suggested Mr. Carlin contact an arborist or a landscaping company go to the site along with a copy of the Enforcement Order and have them come up with a planting plan for him.

Mr. Jernstrom said that the Enforcement Order required that a restoration plan be filed with the Conservation Commission on or before August 26, 2014. He stated that "the restoration plan for the cleared area shall be prepared and delivered to the Conservation Commission within 60 days which was the August 26th date. Further, the plan was to show a one-to-one replacement of the trees that were removed with a species suitable for the soils on the site. Replacement shall be at least 2 inches in diameter and 6 feet tall". He continued by stating that "all slash and logs were to be removed from the site and properly disposed of before September 15, 2014. The replacement trees, as shown in the restoration plan, shall be planted before May 31, 2015 and any of these trees that do not survive for 12 months after planting shall be replaced in kind."

Mr. Jernstrom further stated that the Commission thought they were being generous and liberal with the time frame they were providing. Mr. Carlin agreed. Mr. Jernstrom said at the June 25th meeting it was discussed that they would go out after it was cleared and they were talking about approximately 40 trees. He said that Mr. Carlin was supposed to have the restoration plan and the Commission was going to go out to the site and go over that plan. Mr. Jernstrom said the number of 15 or so trees was never a part of the discussion because in the site visit it was quite obvious that it was in excess of that. Mr. Carlin said he knows it wasn't 40 trees. Mr. O'Brien disagreed.

Mr. O'Brien said from his experience it was 40 trees. Mr. Carlin said that the stumps are still there and they can count them. Mr. O'Brien said that he doesn't think that he

would want them to that because the number may climb. However, if Mr. Carlin wants, they will go out and count. He said, again, from his experience, 40 is a good number for him. Mr. Carlin said that he is happy to replace them one for one and he doesn't think it was 40 trees and he would be happy to review that with anyone.

Mr. Jernstrom asked Mr. Carlin if the area has been completely cleared of the slash and everything that has been cut down. Mr. Carlin said no. Mr. Jernstrom asked him when he could have that done by. Mr. Stinson added that they don't want him to just go in and do it because the Commission wants it to be part of the restoration work so they can review and approve it.

Mr. Jernstrom explained to Mr. Carlin the reason they put that language in there was because in the beginning there were so many downed trees and slash it was very hard to make a determination of an exact number.

Mr. Stinson asked Mr. Carlin if he is willing to work with the East Longmeadow Conservation Commission. Mr. Carlin said yes that he was planning on planting the trees. He said what he took down were white pines that were shading and blocking his view of his property. Mr. Carlin said there are people on his property regularly along with people with guns. He said he has two young children and the whole neighborhood plays in his property because it connects to Brookhaven and the streets behind there.

Mr. Stinson said regardless who signed for the Order, it was accepted at the property, so it is still a valid Enforcement Order and it is not appealable anymore. He said that Mr. Carlin had a two month window where he could have appealed to Superior Court and the two months is up. He said that it is a valid Enforcement Order and DEP could take the case, win in it in a heartbeat, and hit him with about \$10,000 in fines. Mr. Stinson said that is not their goal, their goal is restoration. He recommended Mr. Carlin get an arborist/landscaping company to go to the property to do what is required by the Enforcement Order and come up with a restoration plan and present it to the Commission for their review and approval.

Mr. Carlin said that his restoration plan is to clean up what was cut down. Mr. Stinson said that DEP's preference is an arborist who can give a rough layout because there are wetlands and floodplain and the trees planted need to be trees that will be able to survive the high ground water. He said white pines are upland species and red maple would do well back there but he doesn't know what was there before.

Mr. Reich-Graefe stated that Mr. Carlin already said he will replace one for one and assumes that he will have to go to a nursery to buy them. Mr. Carlin can show them the Enforcement Order as to what are suitable trees. Mr. Reich-Graefe stated that as part of the cost of the trees, the nursery would probably be happy to sell him whatever number of trees he needs, after doing a quick lay of the land, together with the trees that are going to go in there and that wouldn't be that complicated to do. Mr. Carlin said that he doesn't think it is complicated however he thought he had more time. He reminded the Board that he is going through some personal issues with his wife's health

and the day that he talked with them they didn't have his full attention because he had just found out that she had breast cancer.

Mr. O'Brien said that the Commission is sympathetic to his personal issues, and they are trying work him. Mr. Carlin said that he understands that and he will do what he said he was going to do. He said that doesn't think that 40 trees were cut down and for some reason he thought it was 20 or so trees and he wrote down the details. Mr. Carlin said that his plan was to, within the certain time frame, ultimately clean everything up and see what's there as far as trees cut down and replace those trees. He said that he is not anti-having trees, he is just anti-having a property that was as congested and as dark and he wanted it to be usable for his kids. Mr. Carlin said that he is not the one back there using it for hunting and climbing trees and playing under trees that were leaning over. Mr. O'Brien suggested that he post the property. Mr. Jernstrom said post it, put a fence up. Mr. Carlin said that he is not going to that either. Mr. O'Brien said if he posted it properly then people would be duly notified.

Mr. Jernstrom said obviously he heard what Mr. Stinson was talking about that, based on the location of your property with regard to wetlands, you cannot just go in and cut down the amount of trees that were cut down. He showed Mr. Carlin the letter sent to him and asked him if he received it. Mr. Carlin said that he doesn't remember seeing it. He said that he is not at home a lot, he has stuff that comes there regularly, he has people working there regularly, his wife has people taking care of her regularly. Mr. Carlin said that he doesn't answer the door or check his mail and said honestly he is not there to do that.

Mr. O'Brien said that everyone is responsible for their mail. Mr. Carlin said that he understands that but if someone else is signing it he can't be responsible for that. He admitted that he has a stack of mail and he will look to see if he received those letters that it is just not a priority in his life right now. Mr. O'Brien said that he has been notified and you heard the Enforcement Order being read into the record. Mr. Carlin asked if they want him to type something up or hand write something.

Mr. Stinson recommended Mr. Carlin get a landscaper and have them come up with the report. By doing that, the Commission knows that it's going to work. Mr. Carlin asked if the landscaper should name what kind of trees would be planted and how many.

Mr. Stinson said that he doesn't want the Commission to Amend the Enforcement Order because that starts the two month window again where it can be appealed. He stated that "a restoration plan shall be for the clear area" and it doesn't specifically state that a landscaper has to do it but he thinks the Commission would be more open to accepting a landscaper's report then something that Mr. Carlin would put together. Mr. Carlin they want a landscaper to type something up. Mr. Stinson said yes.

Mr. Jernstrom said that they are saying landscaper because it needs to be someone that has some knowledge of what is required for the replanting of the certain species he needs to replace them with. He said that he just can't put anything in there that he

thinks looks good. Mr. Arment said that it would have to be an arborist not just generally a landscaper. Mr. Stinson added if he did it himself the Commission could reject it saying that it is not adequate and you could be bouncing around for months and not getting anything done. He said if it he had a landscaper or arborist do it is the Commission would be more likely to accept it the first go around.

Mr. Carlin asked how many and what kind of trees do they want him to plant. Mr. Jernstrom said that information is in the Order and suggested that he go through his mail to find the documents. Mr. O'Brien suggested that he could also go to the Conservation office the next day and get copies. Mr. Stinson also told Mr. Carlin if he makes the Conservation Commission happy then DEP will not get involved and he (Mr. Carlin) doesn't want the state to be involved if it doesn't have to be.

Mr. Jernstrom gave Mr. Carlin a copy of the minutes from the June 25th meeting so that he could recall what was discussed.

Mr. Reich-Graefe said that they are looking for an arborist's plan - they will go to his property, look at what has been removed and determine what needs to be replaced in accordance with that. A plan of the property should be prepared, pointing out all of the trees, where the trees were that were removed, numbers or tags as to what trees need to be replaced with a list of the trees at the bottom showing what trees would be planted, using the tags to show where they will be replanted. He said at the bottom of the plan there should be legend of where the trees were that removed, numbers or tags as to what the trees are, a list of the replacement trees and a tag to show where they have been replanted. Mr. Reich-Graefe said then the Commission can look at it to make sure that is in conformity with the Enforcement Order requirements. Mr. Carlin said okay.

Mr. Jernstrom asked the Commission how they felt about doing a site visit the next evening. A few of the members and Mr. Carlin agreed on the next evening, September 11th at 6:30 p.m. for a site visit.

Mr. Stinson added that National Heritage is also involved because Mr. Carlin is also in violation of the Endangered Species Act because there are endangered species on his property. He said if Mr. Carlin is working with the Commission, he (Mr. Stinson) needs a copy of the restoration plan and he will take care of working with Natural Heritage because they need to sign off on the plan also. Mr. Stinson told Mr. Carlin if he doesn't work with Commission then everyone is going to be going after him and no one wants that. Mr. Jernstrom stated that a plot plan will show Mr. Carlin's property and where exactly he is going to do what he is planning. Mr. Arment advised Mr. Carlin to go to the East Longmeadow web site and he can print one out. Mr. Stinson stated that any landscaper and/or arborist will call and work with the Conservation Commission to assist him. Mr. Reich-Graefe also stated that Mr. Carlin could bring such an arborist with him to the next meeting.

Mr. Carlin said that everyone keeps saying arborist and asked how specific is that and an arborist sounds expensive. He said that eighteen of his friends are landscapers and they probably wouldn't charge him \$5,000 to put an arborist plan together. Mr. Carlin said that the majority of his friends are from East Longmeadow and half of them are landscapers and the whole arborist thing is scaring him. Mr. Jernstrom said the more knowledge they have is a plus and the less knowledge they have will put the onus on him to try and select the correct species. Mr. O'Brien said have someone qualified do it and he (Mr. O'Brien) would know if they were good.

Mr. Sheets said they just want a species that is going to last. He continued by stating that they do not know if white pines or apple trees would not last, and if they do not you would have to replant something that would. Mr. Jernstrom said the intent of the replanting is to replace the canopy that has been removed. So, it has to be trees that would replace the canopy – an apple tree is not a canopy tree. Mr. Stinson stated that a landscaper would look at what was there and try to mimic it by picking out the right trees.

Mr. Stinson stated that the Commission could waive taking action but leave the deadlines alone. Mr. Reich-Graefe asked Mr. Carlin how quickly does he think he can come up with a plan so that the Commission could sign off on it and then he can do the work. Mr. Jernstrom added that he would like to see it by November 1st before any snow fall so that the Commission is able to perform an on site. Mr. Stinson said that they should say as soon as possible because they don't want to change the dates or verbally change the terms of the Enforcement Order. He said that there is still the deadline when the work has to be done and a restoration report needs to be prepared as soon as possible. Mr. Stinson said that the Order required the planting be done before May 31, 2015 and that the Commission doesn't need to change any dates but the sooner the better – the landscaper will know what time of year is the best planting time for what trees. Mr. Stinson stated that as long as Mr. Carlin works with the Conservation Commission Natural Heritage would stay out of the picture and he would work with them to make sure they were happy with the restoration plan. The Commission agreed.

Mr. Reich-Graefe asked Mr. Carlin again if he has any idea how long he will need – he would like to have an idea so the Commission is not sitting and waiting. Mr. O'Brien stated that they would be meeting again in two weeks. Mr. Carlin said in all honesty his number one concern is his wife's health. He said that he has a 4 year-old and a 9 year-old, he is a soccer coach, he is taking care of his family and he also has a construction project going on at his house.

Mr. Jernstrom asked Mr. Carlin if he appreciated the potential liability he is exposing himself to. Mr. Carlin answered yes and said that he has no doubt that he can do it by that date, with the hopes that his life is 98% better, however, he does not think he will be back in 2 weeks. He said that he will sit with a couple of landscaper friends and try and get a more accurate count on how many trees are down. Mr. Carlin said that he gets what he has to do and he will work on it and get a plan to them as soon as he has

the time to sit down with someone and walk the land with them. Mr. Reich-Graefe added that was the easy part. Once the plan is agreed upon then Mr. Carlin has until May 31, 2015 to do the actual work. He said that it basically is a little piece that can be done relatively quickly and easily so that no one else is breathing down his neck.

Mr. Jernstrom said certain species like to get planted at certain times of the year and he thinks for the most part, planting ends around Thanksgiving. Mr. O'Brien suggested to Mr. Carlin to talk to his friends and get back to the Commission if not in two weeks then within a month. Mr. Reich-Graefe stated that the second meeting is October 8, 2014.

Mr. Jernstrom thanked Mr. Carlin for coming in and talking with them.

After additional conversation with Mr. Stinson, the Commission thanked him for his time and his input. Mr. Jernstrom asked Mr. Stinson if the Commission needed to notify the Selectmen. Mr. Stinson stated that in this case, no. He added that the DEP would be happy to take over the project. Also, every day Mr. Carlin leaves fill in place, that would be a new violation every day, however, they do not always fine each day. It could have been much more than \$5,000.00. Most of the time that type of fine is for the mega corporations. Mr. Stinson stated that the Commission could also have strength for buffer zones under their by-laws.

Mr. Stinson stated that action could be taken under the town by-law and Mr. Jernstrom suggested that perhaps that should be something the Commission should look into and consider recommending amendments at town meeting.

Mr. Jernstrom asked Mr. Stinson if, under the Enforcement Order, did the Commission have the right to enter the property without notifying Mr. Carlin. Mr. Stinson stated no that the Commission would have to notify him and/or get a search warrant. Mr. Reich-Graefe stated that people need to be treated in a way to encourage them to do what the Commission wants them to do.

Mr. Stinson stated that if Mr. Carlin complies, he will work with National Heritage. He also stated that the Commission should not have allowed Bay Path to cut the trees in the Riverfront area. It was an error, however, inadvertent. The applicant should have given back – planted something to offset the trees that were cut. Just cutting them down without giving back to the environment was not right, however, lesson learned.

The members and Mr. Stinson discussed other projects that were going on throughout the region. Mr. Stinson reiterated that he would work with National Heritage and did not expect a problem as long as Mr. Carlin works with the Commission.

Minutes

The Commission reviewed the minutes for May 14, 2014 and upon motion duly made by Thomas O'Brien and seconded by René Reich-Graefe voted (5-0) to approve the minutes.

The Commission reviewed the minutes for June 25, 2014 and upon motion duly made by Thomas O'Brien and seconded by René Reich-Graefe, voted (5-0) to approve the minutes.

The Commission reviewed the minutes for July 23, 2014 and upon motion duly made by René Reich-Graefe and seconded by Thomas O'Brien, voted (5-0) to approve the minutes.

The Commission reviewed the minutes for August 13, 2014 and upon motion duly made by Thomas O'Brien and seconded by René Reich-Graefe, voted (5-0) to approve the minutes.

There being no further business and upon motion duly made by Thomas O'Brien and seconded by René Reich-Graefe, the Commission voted to adjourn at 7:30 p.m.

For the Commission,

Thomas O'Brien, Clerk